IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION No. 131 OF 1999

Abbas Krishna Kambale,
Retired Subhedar from the
Military, residing at
village Mhaisal (M), Post)
Karoli, (T), Taluka
Kavathe Mahankal,District,
Sangli. Applicant

Vs.

1. Vithal Maruti Patil,
   Adult,
2. Manohar Shahaji Patil
   Adult,
3. Smt. Tanubai Shahaji Patil
   All residing at Village
   Mhaisal (M), Post :
   Karuli (T), Taluka Kavathe
   Mahankal, District
   Sangli.
4. The State of Maharashtra
   At the instance of the
   Kavathe Mahankal, Police
   Station, Taluka: Kavathe
   Mahankal, District Sangli. . . Respondents

Mr. C. R. Sonawane, advocate for the applicant.

Mr. S. A. Ingawale, Advocate for respondent Nos.1 to 3.

Mrs. V. R. Bhosale, APP for respondent no.4.

CORAM : V. R. KINGAONKAR, J.
DATE : APRIL 13, 2007.

ORAL JUDGMENT

? This revision petition at the instance of original complainant arises out of judgment of acquittal, rendered by the learned Additional Sessions Judge Sangli in Special Criminal Case No. 8 of 1997.

2.? Three accused persons, namely, Vitthal Maruti Patil, Manohar Shahaji Patil and Tanubai Shahaji Patil were charge sheeted for the offence punishable under section 3(1)(x)of the Scheduled Castes & Scheduled Tribes(Prevention of Atrocities) Act and section 323, 341, 504, 506 of the Indian Penal Code.

3.? Briefly stated, the prosecution case was that, on May 8, 1997 around 9.30 to 10.30 p.m., the complainant - Abbas Kambale was standing near the house of his brother. He was talking to children of his brother outside the house of his brother, by the side of the road. At that time,

accused No.1 Vitthal reached there. He addressed filthy abuses and insulted the complainant, on the ground of his caste. The accused no.1 further threatened him of beating and putting him in police lock up. When the fracas was at the pick, the brother of the complainant reached there and intervened. Accused No.1 Vitthal returned
to the village locality and returned after some time with other two accused. They again abused him and insulted him on the basis of his caste. The complainant lodged a report at the police station on 8th May 1997. He subsequently gave a typed application on 10-5-1997. Further investigation was carried out and the three accused named above, were charge sheeted.

4.? The learned Sessions Judge framed necessary charge to which accused pleaded not guilty. They denied truth into the accusation.

5. At the trial 7 witnesses were examined by the prosecution. Out of them PW 6 Mrunali and PW 7 Avinash are the daughter and son of the complainant. The learned Sessions Judge came to

the conclusion that the charge is not proved. According to the trial Court, the prosecution was at the behest of the wife of accused no.1, to whom the complainant used to assist. The learned Sessions Judge noticed that accused no.1 and his wife were not pulling on well with each other and there were disputes between them. The learned Sessions Judge also noticed that wife of the accused no.1 had sought help of the complainant and there was probability of false accusation at her instance. The learned Sessions Judge disbelieved the testimonies of the complainant and other eye witnesses, in view of certain discrepancies, as well as in view of the fact that in the First Information Report, dated 8-5-1997, the genesis of the incident, as reported, was not in accordance with the subsequently narrated story. Consequently, the accused were acquitted. Mr. Sonawane, the learned] counsel for the Revision Petitioner argued that ingredients of section 3(1)(x) of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act are duly proved. He would submit that the complainant was insulted in the public view, on the ground of his being a member of Scheduled Castes and thus, the charge is duly

proved. He further submits that the learned Sessions Judge failed to properly appreciate relevant facts. He would contend that there is an element of perversity in the impugned judgment and, therefore, the Revision should be allowed. It is pertinent to note that the State has not filed any appeal against the acquittal. The learned APP Smt. Bhosale, pointed out that there was no specific reason for the accused to insult the complainant, on the basis of his caste. She does not impugn the judgment of acquittal.

6. Having regard to the scope of the revision, it is difficult to minutely scrutinise the evidence and enter into the area of appreciation of evidence, unless any perversity is demonstrated by the revision petitioner. It appears from the recitals of FIR (Exhibit 9) that the complainant Abbas Kambali did not state anything about his caste. He has not mentioned as to whether he is a member of Scheduled Caste and was insulted because the accused had knowledge about his such caste. Secondly, the caste of the accused is also not mentioned in the FIR. Before framing any charge, in the context of provisions of section 3(1)(x) of the

Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, it was very essential to verify whether the complaint discloses caste of the complainant and also that of the accused. The reasons are that without there being proof regarding caste of the complainant, the provisions of section 3(1)(x) of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act are not attracted as held by this Court in **Manohar S/o. Martandrao Kulkarni and Anr. Vs. State of Maharashtra & Ors. [2005(4) Mh.L.J. 588]**

It is held : “even offence cannot be registered, if caste of the complainant does not find place in the recitals of the FIR.” Another aspect of the matter is that if the accused also belongs to Scheduled Caste, then no offence can be registered against him for the aforesaid charge. In the present case, neither the caste of the complainant is stated either in the complaint, or anywhere in his evidence, nor caste of the accused is stated at any place. The first name of the complainant is said to be “Abbas”, though his surname appears to be Kambale, the complainant failed to prove that he is a member of the Scheduled caste. Then, the next

ingredient to be proved is that insult was caused because the accused/s was/were aware about such caste of the complainant and his/their intention was to cause insult for such reason. There is no iota of evidence on record, to say that the accused intended to insult the complainant, because he was member of the Scheduled caste. It is difficult to go by mere filthy abuses which are lateron mentioned in the complaint, dated 10th May 1997. As a matter of fact, the written application (Exhibit C) could not be treated as FIR. In the same night, the complainant had lodged the report about the incident. The earlier report alone can be treated as FIR. The information given at the first blush after the occurance goes to show that the abuses on the basis of caste of the complainant, were not stated. The trial Court has come to the conclusion that in the written report dated 10th May 1997, the complainant made certain more allegations, regarding nature of the filthy abuses and had set out the details thereof. It was his improved story and at the most it can be treated as police statement, instead of the FIR.

8. The finding of the trial court that wife of

the complainant wrote letter to the accused no.3 and sought his help is duly corroborated by the record. It appears from the record that the complainant used to beat his children and therefore, his wife was disturbed. She had therefore, sought help of the accused in order to protect the children.

9. All said and done, the testimonies of the complainant, and the eye witnesses cannot be relied upon, in view of the fact that there are material discrepancies in the First Information Report, lodged by the complainant, which was treated as a non cognizable case, and the subsequent report which was typed one and lodged after 2 days of the incident. Moreover, the probability of the accused having intervened in the dispute between the complainant and his wife is also borne out from the record. The accused might have attempted to scare the complainant, in order to show that his children and the wife are likely to be protected, if he would exceed the limits of cruel treatment meted out to them. The complainant probably was irked thereby. Considering the foregoing reasons, I do not find any illegality committed by the trial

Court while acquitting the accused persons. The impugned order need not, therefore, be interfered with in any manner. In the result, the Revision Application is destitute of substance and is accordingly dismissed.

Sd/-
[V. R. KINGAONKAR,J.]